

## **REMARKS/ARGUMENTS**

Claims 2, 4-7 and 9-12 are pending in the present application. Claims 9-12 were canceled; no claims were amended; and no claims were added. Reconsideration of the claims is respectfully requested.

Applicant wishes to thank the Examiner for his indication of allowable subject matter regarding claims 2 and 4-7.

Applicant has cancelled claims 9 through 12 from further consideration in this application. Applicant is not conceding in this application that those claims are not patentable over the art cited by the Examiner, as the present claim amendments and cancellations are only for facilitating expeditious prosecution of the allowable subject matter noted by the Examiner. Applicant respectfully reserves the right to pursue these and other claims in one or more continuations and/or divisional patent applications.

### **I. 35 U.S.C. § 101**

The Office Action has rejected claims 9-12 under 35 U.S.C. § 101 as being directed towards non-statutory subject matter. This rejection is respectfully traversed.

Regarding claim 9, the Office Action states:

Regarding to claim 9, the claim called for instructions to perform specified functions. However, to the examiner knowledge such instructions needed to be stored on some type of computer readable medium in order for the instructions to execute the specified functions. Thus, since no such computer readable medium is claim storing the instructions the claims is inoperative.

Office Action dated August 15, 2007, p 2.

Applicant has canceled claims 9-12. Therefore, the rejection of claims 9-12 under 35 U.S.C. § 101 has been overcome.

### **II. 35 U.S.C. § 112, Second Paragraph**

The Office Action has rejected claims 9-12 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter, which applicants regard as the invention. This rejection is respectfully traversed.

Regarding claim 9, the Office Action states:

Regarding claim 9, the claim define both a method and an apparatus. The claim as a whole is neither a definition of a method nor of an apparatus but is instead a hybrid of the two; it, therefore, does not define the invention in the manner contemplated by the second sentence of 35 U.S.C. Sec. 112 (see In re Oakley, 1935 C.D. 198,454 O.G. 536, 73 F.2d 934, 24 USPQ 75).

Office Action dated August 15, 2007, p 3.

Applicant has canceled claims 9-12. Therefore, the rejection of claims 9-12 under 35 U.S.C. § 112, second paragraph, has been overcome.

### **III. Conclusion**

It is respectfully urged that the subject application is patentable over the cited rejections and is now in condition for allowance.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,

/Gerald H. Glanzman/

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